

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOYCE TEETERS)	
Claimant)	
VS.)	
)	Docket No. 213,328
HOSTETLER & ASSOCIATES, INC.)	
Respondent)	
AND)	
)	
AETNA CASUALTY & SURETY COMPANY)	
Insurance Carrier)	

ORDER

Respondent requested Appeals Board review of the preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict on January 3, 1997.

ISSUES

The sole issue before the Appeals Board is whether claimant served a timely written claim for compensation benefits upon respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

The Appeals Board has jurisdiction to review a preliminary hearing order when the issue raised is timely written claim. See K.S.A 1996 Supp. 44-534a.

Claimant requested medical treatment for a repetitive trauma injury to her right upper extremity. The Administrative Law Judge ordered respondent to provide such medical treatment through Lanny W. Harris, M.D., an orthopedic surgeon located in

Kansas City, Missouri. Respondent appeals and argues that claimant's claim for workers compensation benefits is barred because she failed to serve a timely written claim on respondent pursuant to K.S.A. 44-520a.

Respondent contends claimant's appropriate date of accident is August 10, 1995. On that date, claimant was examined by Lynn D. Ketchum, M.D., at the respondent's direction. Respondent claims August 10, 1995, is the appropriate date of accident because claimant first became aware of the nature of her injuries from Dr. Ketchum's examination. Dr. Ketchum also recommended, at that time, surgical treatment to relieve the effects of claimant's injuries. Respondent contends August 10, 1995, is further supported as the appropriate date of claimant's accident because Dr. Ketchum examined claimant again on June 6, 1996, and recommended the same surgical procedure for the treatment of claimant's injuries. Therefore, respondent concludes the written claim served upon the respondent on May 28, 1996, is not timely because more than 200 days would have elapsed from claimant's date of accident. See K.S.A. 44-520a. For the claim to be timely, claimant's date of accident would have to have been after November 9, 1995.

The Appeals Board disagrees with respondent's arguments and analysis as to the appropriate date of claimant's accident. The Appeals Board finds claimant's preliminary hearing testimony established that as she continued to work as a court reporter her right upper extremity symptoms worsened. Those symptoms worsened to the point that, in May of 1996, claimant had to self-limit the length of time she could perform her repetitive court reporter duties. Dr. Ketchum's medical note of June 6, 1996, indicates claimant related a history to him that her condition accelerated from the last time he had seen claimant in August 1995 to the point of now being incapacitating.

Before this preliminary hearing, the Administrative Law Judge appointed Lanny W. Harris, M.D., to perform an independent medical examination of claimant. Dr. Harris examined claimant on October 22, 1996. In the doctor's report to the Administrative Law Judge, Dr. Harris attributed claimant's right upper extremity conditions to her court reporting work activities. Among other treatment recommendations, Dr. Harris recommended claimant reduce her level of activity and intensity while performing her court reporting duties.

Claimant has alleged a date of accident commencing March 1, 1995, and continuing each and every day thereafter. The Appeals Board finds claimant's testimony and the medical records introduced at the preliminary hearing prove it is more likely true than not that claimant's right upper extremity condition worsened as she continued to perform her everyday court reporter duties. Respondent seems to further argue, that since claimant has not left work because of her injuries, a date of accident subsequent to August 10, 1995, cannot be determined. In support of this argument, respondent cites the case of Berry v Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994), which established a bright line rule that a claimant's date of accident in a carpal tunnel syndrome case is the

date claimant is required to stop working because of the pain and disability of the carpal tunnel syndrome.

The Appeals Board finds the preliminary hearing record supports the conclusion that claimant's right upper extremity symptoms worsened as she has performed repetitive court reporting duties while employed by respondent. Those symptoms worsened to a point in May 1996 that they became incapacitating, forcing her to limit her work activities. The Appeals Board finds for preliminary hearing purposes that the appropriate date of claimant's accident is May 1996. Accordingly, the Appeals Board finds claimant's written claim for compensation benefits served on respondent on May 28, 1996, was timely.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict on January 3, 1997, is affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of March 1997.

BOARD MEMBER

c: Keith L. Mark, Mission, KS
Gregory D. Worth, Lenexa, KS
Bryce D. Benedict , Administrative Law Judge
Philip S. Harness, Director